

JOHN LEATHERS.

FEBRUARY 12, 1886.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. NEAL, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill S. 767.]

The Committee on Claims, to whom was referred the bill (S. 767) for the relief of John Leathers, having considered the same and accompanying papers, submit the following report:

That the committee find the facts to be as stated in Senate Report No. 3, Forty-ninth Congress, first session, which said report is hereto annexed and made part of this report, and is as follows:

On the 6th day of February, 1879, Leathers was indicted by the grand jury of the United States for the district of Nevada, under sections 2133 and 2139 of the Revised Statutes of the United States. The indictment contained two counts, charging him, first, with attempting to reside as a trader and to introduce goods and to trade in the Indian country in the district of Nevada without a license, as required by law; and second, in introducing or attempting to introduce spirituous liquors into the said Indian country. Said acts were alleged to have taken place within the limits of the Pyramid Lake Indian Reservation in said district.

On the 1st day of July, same year, he was convicted by a trial jury in the district court of said district of the offenses charged in said indictment, and the day for pronouncing judgment against him postponed until the first Tuesday in December following, in order that he might have time to present his application for executive clemency. A petition for his pardon appears to have been forwarded to the Attorney-General by the United States attorney for the district of Nevada, July 25, 1879. Said petition, after reciting the facts above set forth, contains the following:

"And your petitioner respectfully represents that he honestly and really at all times believed that his place of business was located outside of the limits of said reservation; that the posts and monuments set up by the Indian agents in charge of said reservation to mark and designate the boundaries thereof were not truly placed, and were calculated to and did mislead your petitioner, as fully appears by the special findings of the jury in the case, a true copy of which is hereunto annexed and made part hereof.

"And petitioner further represents that he was never notified by any officers of the Government to remove from his said location, and never knew that there was any reason to suppose he was violating the law until he was arrested by the United States marshal under the indictment aforesaid."

The following is a copy of the special findings of the jury in the case annexed to said petition:

"First. Is the defendant's place of business within the Pyramid Lake Indian Reservation as the red lines are shown on the map of Mr. Monroe?

"Yes.

"Second. Is the defendant's place of business within the lines of said reservation as marked by the wooden posts set up at the instance of Bateman, the Indian agent?

"No.

"Third. Is the defendant's place of business within the lines of the reservation as those lines are or were marked by the stone monuments set up by Mr. Monroe at the time of surveying the reservation?

"No.

"Fourth. Did the defendant trade at his place of business without a license, and did he introduce spirituous liquors there?"

"Yes."

Indorsed upon said petition is the following statement:

I am of the opinion that the facts which appear in the case show that the statements in the foregoing petition are true, and that they authorize the granting of the pardon prayed for. The conduct of the Government through its local offices for many years in relation to the reservation mentioned has been such as to induce the larger portion of the entire population of Western Nevada to believe there was no legal reservation. The survey was by triangulation. No monuments were set up by the surveyors except at the angles and corners, and then only at long distances and on top of mountain peaks, and the only designation of boundaries was made subsequent to survey by the agent, and his designation was erroneous and misled the petitioner Leathers.

I heartily join my petition with his for a free pardon.

E. W. HILLYER, *District Judge.*

C. S. VANAIR, *District Attorney.*

AUGUSTUS ASH, *United States Marshal, Nevada.*

A. J. BARNES, *Late Indian Agent, Nevada.*

From the original letters of the United States district attorney for the district of Nevada to the Attorney-General, it appears that after said conviction was had, if not before, he became doubtful as to whether the United States district court had jurisdiction of the case, and submitted that question to the Attorney-General, stating that the question of jurisdiction had been overlooked by counsel for defendant and by the court. The Attorney-General, it appears, decided that the court had no jurisdiction. We quote the following from one of said letters, dated February 26, 1880:

"My position is somewhat embarrassing in these cases. It hardly seems proper for me, or in the line of my duty as a prosecuting officer, to press these cases to a final judgment of fine, which will probably result in imprisonment, with the knowledge that the court has no jurisdiction. On the other hand, should I confess the error now the moral effect of these convictions will be lost, and the officers of the Indian agency will be caused much annoyance and trouble. It seems an anomaly to issue pardons for non-existing offenses; yet, if they could be granted consistently with the position the Government ought to occupy, the whole matter would be relieved from embarrassment."

The application for pardon was not acted upon till the 28th day of February, 1881, when the President granted to the claimant a full unconditional pardon. In the mean time sentence had been pronounced upon the claimant, and he had been adjudged to pay a fine of \$501 and the costs of prosecution, amounting to \$243.90, which amount had been paid and covered into the Treasury of the United States by Miscellaneous Warrant No. 1397, first quarter of 1881.

The granting of the pardon appears to have been a proper exercise of executive clemency, but it came too late to avail the claimant, although the effect of a pardon by the President is to remit a pecuniary penalty accruing to the United States, yet if the penalty has been paid, and the money actually covered into the Treasury, it cannot be drawn therefrom without appropriation by act of Congress (8 Op. Att'y-Gen., 281).

The United States attorney for the district of Nevada recommended the granting of the pardon upon condition that the claimant should pay the costs of the prosecution. Acting upon this suggestion the Senate Committee on Claims, at the first session of the Forty-eighth Congress (Report No. 47), recommended that the bill introduced at that session of Congress and referred to the committee for the relief of the claimant should be amended so as to provide for refunding to the claimant the amount of said fine only (\$501); but upon further examination of this claim your committee are of the opinion that inasmuch as the claimant received a full and unconditional pardon, the full amount of fine and costs paid by him should be refunded to him without interest, and therefore recommend that the bill be amended by striking out the words "five hundred" and inserting the words "seven hundred and forty-four dollars and ninety cents," and that when so amended the bill do pass.

The committee therefore adopt said Senate report as the report of this committee, and report the accompanying bill for his relief, with recommendation that it pass.

APPENDIX.

The effect of a pardon upon the condition and rights of its recipient is established by the following decision, from which extracts are given :

Case of *Osborn v. The United States*. United States Reports Supreme Court, Otto, vol. 1, pp. 474, 475, 476, 477, and 478.

* * * A pardon by the President restores to its recipient all rights of property lost by the offense pardoned. * * * The pardon of that offense necessarily carried with it the release of the penalty attached to its commission. * * * It is of the very essence of a pardon that it releases the offender from the consequences of his offense.

* * * The penalty of forfeiture annexed to the commission of the offense must fall with the pardon of the offense itself, provided the full operation of the pardon be not restrained by the condition upon which it is granted. * * * The pardon, in releasing the offense, obliterating it in legal contemplation (*Carlisle v. United States*, 16 Wall., 151), removes the ground of the forfeiture upon which the decree rests.

* * * But, were this otherwise, the constitutional grant to the President of the power to pardon offenses must be held to carry with it, as an incident, the power to release penalties and forfeitures which accrue from the offenses.